

REFERENCE TITLE: repeat DUI offenders; lower BAC

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1042

Introduced by
Senator Waring

AN ACT

AMENDING SECTION 28-673, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 1; AMENDING SECTION 28-1321, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 3; AMENDING SECTIONS 28-1381, 28-1382 AND 28-1385, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-673, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 312, section 1, is amended to read:

4 28-673. Traffic accidents; implied consent; tests

5 A. A person who operates a motor vehicle within this state gives
6 consent to a test or tests of the person's blood, breath, urine or other
7 bodily substance for the purposes of determining alcohol concentration or
8 drug content if the person is involved in a traffic accident resulting in
9 death or serious physical injury as defined in section 13-105 and a law
10 enforcement officer has probable cause to believe that the person caused the
11 accident or the person is issued a citation for a violation of any provision
12 of this article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of
13 this title.

14 B. The test or tests chosen by the law enforcement agency shall be
15 administered at the direction of a law enforcement officer who has reasonable
16 grounds to believe that the person was involved in a traffic accident
17 resulting in death or serious physical injury as defined in section 13-105
18 and who has probable cause to believe that the person caused the accident or
19 the person was issued a citation for a violation of any provision of this
20 article, article 2, 3 or 5 through 15 of this chapter or chapter 4 of this
21 title.

22 C. After a determination is made that a person was involved in a
23 traffic accident resulting in death or serious physical injury as defined in
24 section 13-105 and the officer has probable cause to believe that the person
25 caused the accident or the person was issued a citation for a violation of
26 any provision of this article, article 2, 3 or 5 through 15 of this chapter
27 or chapter 4 of this title, the person may be requested to submit to and
28 successfully complete any test or tests prescribed by subsection A of this
29 section, and if the person refuses, the person shall be informed that the
30 person's license or permit to drive will be suspended or denied for twelve
31 months, or for two years for a second or subsequent refusal in a period of
32 sixty months, unless the person expressly agrees to submit to and
33 successfully completes the test or tests. A failure to expressly agree to
34 the test or successfully complete the test is deemed a refusal. The person
35 shall also be informed that ~~if the test results show a blood or breath~~
36 ~~alcohol concentration of 0.08 or more, or if the results show a blood or~~
37 ~~breath alcohol concentration of 0.04 or more and the person was driving or in~~
38 ~~actual physical control of a commercial motor vehicle,~~ the person's license
39 or permit to drive will be suspended or denied for not less than ninety
40 consecutive days IF THE TEST RESULTS SHOW A BLOOD OR BREATH ALCOHOL
41 CONCENTRATION AS FOLLOWS:

42 1. 0.08 OR MORE.

43 2. 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL
44 CONTROL OF A COMMERCIAL MOTOR VEHICLE.

1 3. EXCEPT AS PROVIDED IN PARAGRAPH 4 OF THIS SUBSECTION, 0.05 OR MORE
2 IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION
3 OF SECTION 28-1381, 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT
4 IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382
5 OR 28-1383.

6 4. ANY LEVEL THAT IS MORE THAN 0.0 IF WITHIN THE PREVIOUS SIXTY MONTHS
7 THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1383, SUBSECTION A,
8 PARAGRAPH 2 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE
9 WOULD BE A VIOLATION OF SECTION 28-1383, SUBSECTION A, PARAGRAPH 2.

10 D. If a person refuses to submit to the test designated by the law
11 enforcement agency as provided in subsection B of this section:

12 1. The test shall not be given, except as provided in section 28-1388,
13 subsection E or pursuant to a search warrant.

14 2. The law enforcement officer directing the administration of the
15 test shall:

16 (a) File a certified report of the refusal with the department.

17 (b) On behalf of the department, serve an order of suspension on the
18 person that is effective fifteen days after the date the order is served.

19 (c) Require the immediate surrender of any license or permit to drive
20 that is issued by this state and that is in the possession or control of the
21 person.

22 (d) If the license or permit is not surrendered, state the reason why
23 it is not surrendered.

24 (e) If a valid license or permit is surrendered, issue a temporary
25 driving permit that is valid for fifteen days.

26 (f) Forward the certified report of refusal, a copy of the completed
27 notice of suspension, a copy of any completed temporary permit and any driver
28 license or permit taken into possession under this section to the department
29 within five days after the issuance of the notice of suspension.

30 E. Section 28-1321, subsections E through P apply to any test
31 prescribed by this section and to any person who refuses to submit to a test
32 prescribed by this section, except that:

33 1. The certified report shall state the law enforcement officer's
34 reasonable grounds to believe that the person was involved in a traffic
35 accident resulting in death or serious physical injury as defined in section
36 13-105 and the law enforcement officer's probable cause to believe that the
37 person caused the accident or the person was issued a citation for a
38 violation of any provision of this article, article 2, 3 or 5 through 15 of
39 this chapter or chapter 4 of this title.

40 2. The certified report shall be filed pursuant to subsection D of
41 this section.

42 3. The scope of the hearing shall include the law enforcement
43 officer's probable cause to believe that the person was involved in a traffic
44 accident resulting in death or serious physical injury as defined in section
45 13-105 and the law enforcement officer's probable cause to believe that the

1 person caused the accident or the person was issued a citation for a
2 violation of any provision of this article, article 2, 3 or 5 through 15 of
3 this chapter or chapter 4 of this title.

4 F. A person who is dead, unconscious or otherwise in a condition
5 rendering the person incapable of refusal is deemed not to have withdrawn the
6 consent provided by subsection A of this section and the test or tests shall
7 be administered.

8 Sec. 2. Section 28-1321, Arizona Revised Statutes, as amended by Laws
9 2005, chapter 312, section 3, is amended to read:

10 28-1321. Implied consent; tests; refusal to submit to test;
11 order of suspension; hearing; review; temporary
12 permit; notification of suspension; special ignition
13 interlock restricted driver license

14 A. A person who operates a motor vehicle in this state gives consent,
15 subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or
16 28-1383, to a test or tests of the person's blood, breath, urine or other
17 bodily substance for the purpose of determining alcohol concentration or drug
18 content if the person is arrested for any offense arising out of acts alleged
19 to have been committed in violation of this chapter or section 4-244,
20 paragraph 33 while the person was driving or in actual physical control of a
21 motor vehicle while under the influence of intoxicating liquor or drugs. The
22 test or tests chosen by the law enforcement agency shall be administered at
23 the direction of a law enforcement officer having reasonable grounds to
24 believe that the person was driving or in actual physical control of a motor
25 vehicle in this state either:

26 1. While under the influence of intoxicating liquor or drugs.

27 2. If the person is under twenty-one years of age, with spirituous
28 liquor in the person's body.

29 B. After an arrest a violator shall be requested to submit to and
30 successfully complete any test or tests prescribed by subsection A of this
31 section, and if the violator refuses the violator shall be informed that the
32 violator's license or permit to drive will be suspended or denied for twelve
33 months, or for two years for a second or subsequent refusal within a period
34 of sixty months, unless the violator expressly agrees to submit to and
35 successfully completes the test or tests. A failure to expressly agree to
36 the test or successfully complete the test is deemed a refusal. The violator
37 shall also be informed that ~~if the test results show a blood or breath~~
38 ~~alcohol concentration of 0.08 or more, or if the results show a blood or~~
39 ~~breath alcohol concentration of 0.04 or more and the violator was driving or~~
40 ~~in actual physical control of a commercial motor vehicle,~~ the violator's
41 license or permit to drive will be suspended or denied for not less than
42 ninety consecutive days **IF THE TEST RESULTS SHOW A BLOOD OR BREATH ALCOHOL**
43 **CONCENTRATION AS FOLLOWS:**

44 1. 0.08 OR MORE.

1 2. 0.04 OR MORE IF THE PERSON WAS DRIVING OR IN ACTUAL PHYSICAL
2 CONTROL OF A COMMERCIAL MOTOR VEHICLE.

3 3. EXCEPT AS PROVIDED IN PARAGRAPH 4 OF THIS SUBSECTION, 0.05 OR MORE
4 IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION
5 OF SECTION 28-1381, 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT
6 IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382
7 OR 28-1383.

8 4. ANY LEVEL THAT IS MORE THAN 0.0 IF WITHIN THE PREVIOUS SIXTY MONTHS
9 THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1383, SUBSECTION A,
10 PARAGRAPH 2 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE
11 WOULD BE A VIOLATION OF SECTION 28-1383, SUBSECTION A, PARAGRAPH 2.

12 C. A person who is dead, unconscious or otherwise in a condition
13 rendering the person incapable of refusal is deemed not to have withdrawn the
14 consent provided by subsection A of this section and the test or tests may be
15 administered, subject to section 4-244, paragraph 33 or section 28-1381,
16 28-1382 or 28-1383.

17 D. If a person under arrest refuses to submit to the test designated
18 by the law enforcement agency as provided in subsection A of this section:

19 1. The test shall not be given, except as provided in section 28-1388,
20 subsection E or pursuant to a search warrant.

21 2. The law enforcement officer directing the administration of the
22 test shall:

23 (a) File a certified report of the refusal with the department.

24 (b) On behalf of the department, serve an order of suspension on the
25 person that is effective fifteen days after the date the order is served.

26 (c) Require the immediate surrender of any license or permit to drive
27 that is issued by this state and that is in the possession or control of the
28 person.

29 (d) If the license or permit is not surrendered, state the reason why
30 it is not surrendered.

31 (e) If a valid license or permit is surrendered, issue a temporary
32 driving permit that is valid for fifteen days.

33 (f) Forward the certified report of refusal, a copy of the completed
34 notice of suspension, a copy of any completed temporary permit and any driver
35 license or permit taken into possession under this section to the department
36 within five days after the issuance of the notice of suspension.

37 E. The certified report is subject to the penalty for perjury as
38 prescribed by section 28-1561 and shall state all of the following:

39 1. The officer's reasonable grounds to believe that the arrested
40 person was driving or in actual physical control of a motor vehicle in this
41 state either:

42 (a) While under the influence of intoxicating liquor or drugs.

43 (b) If the person is under twenty-one years of age, with spirituous
44 liquor in the person's body.

1 2. The manner in which the person refused to submit to the test or
2 tests.

3 3. That the person was advised of the consequences of refusal.

4 F. On receipt of the certified report of refusal and a copy of the
5 order of suspension and on the effective date stated on the order, the
6 department shall enter the order of suspension on its records unless a
7 written request for a hearing as provided in this section has been filed by
8 the accused person. If the department receives only the certified report of
9 refusal, the department shall notify the person named in the report in
10 writing sent by mail that:

11 1. Fifteen days after the date of issuance of the notice the
12 department will suspend the person's license or permit, driving privilege or
13 nonresident driving privilege.

14 2. The department will provide an opportunity for a hearing if the
15 person requests a hearing in writing and the request is received by the
16 department within fifteen days after the notice is sent.

17 G. The order of suspension issued by a law enforcement officer or the
18 department under this section shall notify the person that:

19 1. The person may submit a written request for a hearing.

20 2. The request for a hearing must be received by the department within
21 fifteen days after the date of the notice or the order of suspension will
22 become final.

23 3. The affected person's license or permit to drive or right to apply
24 for a license or permit or any nonresident operating privilege will be
25 suspended for twelve months from that date or for two years from that date
26 for a second or subsequent refusal within a period of sixty months.

27 H. The order for suspension shall:

28 1. Be accompanied by printed forms that are ready to mail to the
29 department and that may be filled out and signed by the person to indicate
30 the person's desire for a hearing.

31 2. Advise the person that unless the person has surrendered any driver
32 license or permit issued by this state the person's hearing request will not
33 be accepted, except that the person may certify pursuant to section 28-3170
34 that the license or permit is lost or destroyed.

35 I. On the receipt of a request for a hearing, the department shall set
36 the hearing within thirty days in the county in which the person named in the
37 report resides unless the law enforcement agency filing the certified report
38 of refusal pursuant to subsection D of this section requests at the time of
39 its filing that the hearing be held in the county where the refusal occurred.

40 J. A timely request for a hearing stays the suspension until a hearing
41 is held, except that the department shall not return any surrendered license
42 or permit to the person but may issue temporary permits to drive that expire
43 no later than when the department has made its final decision. If the person
44 is a resident without a license or permit or has an expired license or
45 permit, the department may allow the person to apply for a license or permit.

1 If the department determines the person is otherwise entitled to the license
2 or permit, the department shall issue and retain a license or permit subject
3 to this section.

4 K. Hearings requested under this section shall be conducted in the
5 same manner and under the same conditions as provided in section
6 28-3306. For the purposes of this section, the scope of the hearing shall
7 include only the issues of whether:

8 1. A law enforcement officer had reasonable grounds to believe that
9 the person was driving or was in actual physical control of a motor vehicle
10 in this state either:

11 (a) While under the influence of intoxicating liquor or drugs.

12 (b) If the person is under twenty-one years of age, with spirituous
13 liquor in the person's body.

14 2. The person was placed under arrest.

15 3. The person refused to submit to the test.

16 4. The person was informed of the consequences of refusal.

17 L. If the department determines at the hearing to suspend the affected
18 person's privilege to operate a motor vehicle, the suspension provided in
19 this section is effective fifteen days after giving written notice of the
20 suspension, except that the department may issue or extend a temporary
21 license that expires on the effective date of the suspension. If the person
22 is a resident without a license or permit or has an expired license or permit
23 to operate a motor vehicle in this state, the department shall deny to the
24 person the issuance of a license or permit for a period of twelve months
25 after the order of suspension becomes effective or for a period of two years
26 after the order of suspension becomes effective for a second or subsequent
27 refusal within a period of sixty months.

28 M. If the suspension order is sustained after the hearing, a motion
29 for rehearing is not required. Within thirty days after a suspension order
30 is sustained, the affected person may file a petition in the superior court
31 to review the final order of suspension or denial by the department in the
32 same manner provided in section 28-3317. The court shall hear the review of
33 the final order of suspension or denial on an expedited basis.

34 N. If the suspension or determination that there should be a denial of
35 issuance is not sustained, the ruling is not admissible in and has no effect
36 on any administrative, civil or criminal court proceeding.

37 O. If it has been determined under the procedures of this section that
38 a nonresident's privilege to operate a motor vehicle in this state has been
39 suspended, the department shall give information in writing of the action
40 taken to the motor vehicle administrator of the state of the person's
41 residence and of any state in which the person has a license.

42 P. After completing not less than ninety consecutive days of the
43 period of suspension required by this section, a person whose driving
44 privilege is suspended pursuant to this section may apply to the department
45 for a special ignition interlock restricted driver license pursuant to

1 section 28-1401. Unless the certified ignition interlock period is extended
2 by the department pursuant to section 28-1402, a person who is issued a
3 special ignition interlock restricted driver license as provided in this
4 subsection shall maintain a functioning certified ignition interlock device
5 in compliance with THIS chapter ~~4 of this title~~ during the remaining period
6 of the suspension prescribed by this section. This subsection does not apply
7 to a person whose driving privilege is suspended for a second or subsequent
8 refusal within a period of sixty months or a person who within a period of
9 sixty months has been convicted of a second or subsequent violation of
10 article 3 of this chapter or section 4-244, paragraph 33 or an act in another
11 jurisdiction that if committed in this state would be a violation of article
12 3 of this chapter or section 4-244, paragraph 33.

13 Sec. 3. Section 28-1381, Arizona Revised Statutes, is amended to read:

14 28-1381. Driving or actual physical control while under the
15 influence; trial by jury; presumptions; admissible
16 evidence; sentencing; classification

17 A. It is unlawful for a person to drive or be in actual physical
18 control of a vehicle in this state under any of the following circumstances:

19 1. While under the influence of intoxicating liquor, any drug, a vapor
20 releasing substance containing a toxic substance or any combination of
21 liquor, drugs or vapor releasing substances if the person is impaired to the
22 slightest degree.

23 2. If the person has an alcohol concentration of 0.08 or more within
24 two hours of driving or being in actual physical control of the vehicle and
25 the alcohol concentration results from alcohol consumed either before or
26 while driving or being in actual physical control of the vehicle.

27 3. While there is any drug defined in section 13-3401 or its
28 metabolite in the person's body.

29 4. If the vehicle is a commercial motor vehicle that requires a person
30 to obtain a commercial driver license as defined in section 28-3001 and the
31 person has an alcohol concentration of 0.04 or more.

32 5. IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF 0.05 OR MORE WITHIN
33 TWO HOURS OF DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND
34 THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL CONSUMED EITHER BEFORE OR
35 WHILE DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND WITHIN
36 THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF THIS
37 SECTION OR SECTION 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT
38 IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF THIS SECTION OR SECTION
39 28-1382 OR 28-1383.

40 6. IF THE PERSON HAS AN ALCOHOL CONCENTRATION OF MORE THAN 0.00 WITHIN
41 TWO HOURS OF DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND
42 THE ALCOHOL CONCENTRATION RESULTS FROM ALCOHOL CONSUMED EITHER BEFORE OR
43 WHILE DRIVING OR BEING IN ACTUAL PHYSICAL CONTROL OF THE VEHICLE AND WITHIN
44 THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION
45 28-1383, SUBSECTION A, PARAGRAPH 2 OR AN ACT IN ANOTHER JURISDICTION THAT IF

1 COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383, SUBSECTION
2 A, PARAGRAPH 2.

3 B. It is not a defense to a charge of a violation of subsection A,
4 paragraph 1 of this section that the person is or has been entitled to use
5 the drug under the laws of this state.

6 C. A person who is convicted of a violation of this section is guilty
7 of a class 1 misdemeanor.

8 D. A person using a drug prescribed by a medical practitioner licensed
9 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
10 subsection A, paragraph 3 of this section.

11 E. In any prosecution for a violation of this section, the state shall
12 allege, for the purpose of classification and sentencing pursuant to this
13 section, all prior convictions of violating this section, section 28-1382 or
14 section 28-1383 occurring within the past thirty-six months, unless there is
15 an insufficient legal or factual basis to do so.

16 F. At the arraignment, the court shall inform the defendant that the
17 defendant may request a trial by jury and that the request, if made, shall be
18 granted.

19 G. In a trial, action or proceeding for a violation of this section or
20 section 28-1383 other than a trial, action or proceeding involving driving or
21 being in actual physical control of a commercial vehicle, the defendant's
22 alcohol concentration within two hours of the time of driving or being in
23 actual physical control as shown by analysis of the defendant's blood, breath
24 or other bodily substance gives rise to the following presumptions:

25 1. If there was at that time 0.05 or less alcohol concentration in the
26 defendant's blood, breath or other bodily substance, it may be presumed that
27 the defendant was not under the influence of intoxicating liquor.

28 2. If there was at that time in excess of 0.05 but less than 0.08
29 alcohol concentration in the defendant's blood, breath or other bodily
30 substance, that fact shall not give rise to a presumption that the defendant
31 was or was not under the influence of intoxicating liquor, but that fact may
32 be considered with other competent evidence in determining the guilt or
33 innocence of the defendant.

34 3. If there was at that time 0.08 or more alcohol concentration in the
35 defendant's blood, breath or other bodily substance, it may be presumed that
36 the defendant was under the influence of intoxicating liquor.

37 H. Subsection G of this section does not limit the introduction of any
38 other competent evidence bearing on the question of whether or not the
39 defendant was under the influence of intoxicating liquor.

40 I. A person who is convicted of a violation of this section:

41 1. Shall be sentenced to serve not less than ten consecutive days in
42 jail and is not eligible for probation or suspension of execution of sentence
43 unless the entire sentence is served.

44 2. Shall pay a fine of not less than two hundred fifty dollars.

45 3. May be ordered by a court to perform community restitution.

1 4. Shall pay an additional assessment of five hundred dollars to be
2 deposited by the state treasurer in the prison construction and operations
3 fund established by section 41-1651. This assessment is not subject to any
4 surcharge. If the conviction occurred in the superior court or a justice
5 court, the court shall transmit the assessed monies to the county treasurer.
6 If the conviction occurred in a municipal court, the court shall transmit the
7 assessed monies to the city treasurer. The city or county treasurer shall
8 transmit the monies received to the state treasurer.

9 5. Shall pay an additional assessment of five hundred dollars to be
10 deposited by the state treasurer in the state general fund. This assessment
11 is not subject to any surcharge. If the conviction occurred in the superior
12 court or a justice court, the court shall transmit the assessed monies to the
13 county treasurer. If the conviction occurred in a municipal court, the court
14 shall transmit the assessed monies to the city treasurer. The city or county
15 treasurer shall transmit the monies received to the state treasurer.

16 J. Notwithstanding subsection I, paragraph 1 of this section, at the
17 time of sentencing the judge may suspend all but twenty-four consecutive
18 hours of the sentence if the person completes a court ordered alcohol or
19 other drug screening, education or treatment program. If the person fails to
20 complete the court ordered alcohol or other drug screening, education or
21 treatment program and has not been placed on probation, the court shall issue
22 an order to show cause to the defendant as to why the remaining jail sentence
23 should not be served.

24 K. If within a period of sixty months a person is convicted of a
25 second violation of this section or is convicted of a violation of this
26 section and has previously been convicted of a violation of section 28-1382
27 or 28-1383 or an act in another jurisdiction that if committed in this state
28 would be a violation of this section or section 28-1382 or 28-1383, the
29 person:

30 1. Shall be sentenced to serve not less than ninety days in jail,
31 thirty days of which shall be served consecutively, and is not eligible for
32 probation or suspension of execution of sentence unless the entire sentence
33 has been served.

34 2. Shall pay a fine of not less than five hundred dollars.

35 3. May be ordered by a court to perform community restitution.

36 4. Shall have the person's driving privilege revoked for one
37 year. The court shall report the conviction to the department. On receipt
38 of the report, the department shall revoke the person's driving privilege and
39 shall require the person to equip any motor vehicle the person operates with
40 a certified ignition interlock device pursuant to section 28-3319. In
41 addition, the court may order the person to equip any motor vehicle the
42 person operates with a certified ignition interlock device for more than
43 twelve months beginning on the date of reinstatement of the person's driving
44 privilege following a suspension or revocation or on the date of the
45 department's receipt of the report of conviction, whichever occurs

1 later. The person who operates a motor vehicle with a certified ignition
2 interlock device under this paragraph shall comply with article 5 of this
3 chapter.

4 5. Shall pay an additional assessment of one thousand two hundred
5 fifty dollars to be deposited by the state treasurer in the prison
6 construction and operations fund established by section 41-1651. This
7 assessment is not subject to any surcharge. If the conviction occurred in
8 the superior court or a justice court, the court shall transmit the assessed
9 monies to the county treasurer. If the conviction occurred in a municipal
10 court, the court shall transmit the assessed monies to the city
11 treasurer. The city or county treasurer shall transmit the monies received
12 to the state treasurer.

13 6. Shall pay an additional assessment of one thousand two hundred
14 fifty dollars to be deposited by the state treasurer in the state general
15 fund. This assessment is not subject to any surcharge. If the conviction
16 occurred in the superior court or a justice court, the court shall transmit
17 the assessed monies to the county treasurer. If the conviction occurred in a
18 municipal court, the court shall transmit the assessed monies to the city
19 treasurer. The city or county treasurer shall transmit the monies received
20 to the state treasurer.

21 L. Notwithstanding subsection K, paragraph 1 of this section, at the
22 time of sentencing, the judge may suspend all but thirty days of the sentence
23 if the person completes a court ordered alcohol or other drug screening,
24 education or treatment program. If the person fails to complete the court
25 ordered alcohol or other drug screening, education or treatment program and
26 has not been placed on probation, the court shall issue an order to show
27 cause as to why the remaining jail sentence should not be served.

28 M. In applying the sixty month provision of subsection K of this
29 section, the dates of the commission of the offense shall be the determining
30 factor, irrespective of the sequence in which the offenses were committed.

31 N. A second violation for which a conviction occurs as provided in
32 this section shall not include a conviction for an offense arising out of the
33 same series of acts.

34 Sec. 4. Section 28-1382, Arizona Revised Statutes, is amended to read:

35 28-1382. Driving or actual physical control while under the
36 extreme influence of intoxicating liquor; trial by
37 jury; sentencing; classification

38 A. It is unlawful for a person to drive or be in actual physical
39 control of a vehicle in this state if the person has an alcohol concentration
40 of 0.15 or more within two hours of driving or being in actual physical
41 control of the vehicle and the alcohol concentration results from alcohol
42 consumed either before or while driving or being in actual physical control
43 of the vehicle.

1 B. A person who is convicted of a violation of this section is guilty
2 of driving or being in actual physical control of a vehicle while under the
3 extreme influence of intoxicating liquor.

4 C. At the arraignment, the court shall inform the defendant that the
5 defendant may request a trial by jury and that the request, if made, shall be
6 granted.

7 D. A person who is convicted of a violation of this section:

8 1. Shall be sentenced to serve not less than thirty consecutive days
9 in jail and is not eligible for probation or suspension of execution of
10 sentence unless the entire sentence is served.

11 2. Shall pay a fine of not less than two hundred fifty dollars. The
12 fine prescribed in this paragraph and any assessments, restitution and
13 incarceration costs shall be paid before the assessment prescribed in
14 paragraph 3 of this subsection.

15 3. Shall pay an additional assessment of two hundred fifty dollars.
16 If the conviction occurred in the superior court or a justice court, the
17 court shall transmit the monies received pursuant to this paragraph to the
18 county treasurer. If the conviction occurred in a municipal court, the court
19 shall transmit the monies received pursuant to this paragraph to the city
20 treasurer. The city or county treasurer shall transmit the monies received
21 to the state treasurer. The state treasurer shall deposit the monies
22 received in the driving under the influence abatement fund established by
23 section 28-1304.

24 4. May be ordered by a court to perform community restitution.

25 5. Shall be required by the department, on receipt of the report of
26 conviction, to equip any motor vehicle the person operates with a certified
27 ignition interlock device pursuant to section 28-3319. In addition, the
28 court may order the person to equip any motor vehicle the person operates
29 with a certified ignition interlock device for more than twelve months
30 beginning on the date of reinstatement of the person's driving privilege
31 following a suspension or revocation or on the date of the department's
32 receipt of the report of conviction, whichever occurs later. The person who
33 operates a motor vehicle with a certified ignition interlock device under
34 this paragraph shall comply with article 5 of this chapter.

35 6. Shall pay an additional assessment of one thousand dollars to be
36 deposited by the state treasurer in the prison construction and operations
37 fund established by section 41-1651. This assessment is not subject to any
38 surcharge. If the conviction occurred in the superior court or a justice
39 court, the court shall transmit the assessed monies to the county
40 treasurer. If the conviction occurred in a municipal court, the court shall
41 transmit the assessed monies to the city treasurer. The city or county
42 treasurer shall transmit the monies received to the state treasurer.

43 7. Shall pay an additional assessment of one thousand dollars to be
44 deposited by the state treasurer in the state general fund. This assessment
45 is not subject to any surcharge. If the conviction occurred in the superior

1 court or a justice court, the court shall transmit the assessed monies to the
2 county treasurer. If the conviction occurred in a municipal court, the court
3 shall transmit the assessed monies to the city treasurer. The city or county
4 treasurer shall transmit the monies received to the state treasurer.

5 E. Notwithstanding subsection D, paragraph 1 of this section, at the
6 time of sentencing the judge may suspend all but ten days of the sentence if
7 the person completes a court ordered alcohol or other drug screening,
8 education or treatment program. If the person fails to complete the court
9 ordered alcohol or other drug screening, education or treatment program and
10 has not been placed on probation, the court shall issue an order to show
11 cause to the defendant as to why the remaining jail sentence should not be
12 served.

13 F. If ~~within a period of sixty months~~ a person is convicted of a
14 second violation of this section or is convicted of a violation of this
15 section and has previously been convicted of a violation of section 28-1381
16 or 28-1383 or an act in another jurisdiction that if committed in this state
17 would be a violation of this section or section 28-1381 or 28-1383, the
18 person:

19 1. Shall be sentenced to serve not less than one hundred twenty days
20 in jail, sixty days of which shall be served consecutively, and is not
21 eligible for probation or suspension of execution of sentence unless the
22 entire sentence has been served.

23 2. Shall pay a fine of not less than five hundred dollars. The fine
24 prescribed in this paragraph and any assessments, restitution and
25 incarceration costs shall be paid before the assessment prescribed in
26 paragraph 3 of this subsection.

27 3. Shall pay an additional assessment of two hundred fifty
28 dollars. If the conviction occurred in the superior court or a justice
29 court, the court shall transmit the monies received pursuant to this
30 paragraph to the county treasurer. If the conviction occurred in a municipal
31 court, the court shall transmit the monies received pursuant to this
32 paragraph to the city treasurer. The city or county treasurer shall transmit
33 the monies received to the state treasurer. The state treasurer shall
34 deposit the monies received in the driving under the influence abatement fund
35 established by section 28-1304.

36 4. May be ordered by a court to perform community restitution.

37 5. Shall have the person's driving privilege revoked for at least ~~one~~
38 ~~year~~ TWO YEARS. The court shall report the conviction to the department. On
39 receipt of the report, the department shall revoke the person's driving
40 privilege and shall require the person to equip any motor vehicle the person
41 operates with a certified ignition interlock device pursuant to section
42 28-3319. In addition, the court may order the person to equip any motor
43 vehicle the person operates with a certified ignition interlock device for
44 more than twelve months beginning on the date of reinstatement of the
45 person's driving privilege following a suspension or revocation or on the

1 date of the department's receipt of the report of conviction, whichever is
2 later. The person who operates a motor vehicle with a certified ignition
3 interlock device under this paragraph shall comply with article 5 of this
4 chapter.

5 6. Shall pay an additional assessment of one thousand two hundred
6 fifty dollars to be deposited by the state treasurer in the prison
7 construction and operations fund established by section 41-1651. This
8 assessment is not subject to any surcharge. If the conviction occurred in
9 the superior court or a justice court, the court shall transmit the assessed
10 monies to the county treasurer. If the conviction occurred in a municipal
11 court, the court shall transmit the assessed monies to the city treasurer.
12 The city or county treasurer shall transmit the monies received to the state
13 treasurer.

14 7. Shall pay an additional assessment of one thousand two hundred
15 fifty dollars to be deposited by the state treasurer in the state general
16 fund. This assessment is not subject to any surcharge. If the conviction
17 occurred in the superior court or a justice court, the court shall transmit
18 the assessed monies to the county treasurer. If the conviction occurred in a
19 municipal court, the court shall transmit the assessed monies to the city
20 treasurer. The city or county treasurer shall transmit the monies received
21 to the state treasurer.

22 G. Notwithstanding subsection F, paragraph 1 of this section, at the
23 time of sentencing, the judge may suspend all but ~~sixty~~ ONE HUNDRED TWENTY
24 days of the sentence if the person completes a court ordered alcohol or other
25 drug screening, education or treatment program. If the person fails to
26 complete the court ordered alcohol or other drug screening, education or
27 treatment program and has not been placed on probation, the court shall issue
28 an order to show cause as to why the remaining jail sentence should not be
29 served.

30 H. In applying the sixty month provision of subsection F of this
31 section, the dates of the commission of the offense shall be the determining
32 factor, irrespective of the sequence in which the offenses were committed.

33 I. A second violation for which a conviction occurs as provided in
34 this section shall not include a conviction for an offense arising out of the
35 same series of acts.

36 J. A person who is convicted of a violation of this section is guilty
37 of a class 1 misdemeanor.

38 Sec. 5. Section 28-1385, Arizona Revised Statutes, is amended to read:

39 28-1385. Administrative license suspension for driving under
40 the influence; report; hearing; summary review

41 A. A law enforcement officer shall forward to the department a
42 certified report as prescribed in subsection B of this section, subject to
43 the penalty for perjury prescribed by section 28-1561, if both of the
44 following occur:

1 1. The officer arrests a person for a violation of section 4-244,
2 paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

3 2. The person submits to a blood or breath alcohol test permitted by
4 section 28-1321, the results of which indicate either:

5 (a) 0.08 or more alcohol concentration in the person's blood or
6 breath.

7 (b) 0.04 or more alcohol concentration in the person's blood or breath
8 if the person was driving or in actual physical control of a commercial motor
9 vehicle.

10 (c) EXCEPT AS PROVIDED IN SUBDIVISION (d), 0.05 OR MORE ALCOHOL
11 CONCENTRATION IN THE PERSON'S BLOOD OR BREATH IF WITHIN THE PREVIOUS SIXTY
12 MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1381, 28-1382 OR
13 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE
14 WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383.

15 (d) ANY LEVEL THAT IS MORE THAN 0.0 ALCOHOL CONCENTRATION IN THE
16 PERSON'S BLOOD OR BREATH IF WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS
17 CONVICTED OF A VIOLATION OF SECTION 28-1383, SUBSECTION A, PARAGRAPH 2 OR AN
18 ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE WOULD BE A
19 VIOLATION OF SECTION 28-1383, SUBSECTION A, PARAGRAPH 2.

20 B. The officer shall make the certified report required by subsection
21 A of this section on forms supplied or approved by the department. The
22 report shall state information that is relevant to the enforcement action,
23 including:

24 1. Information that adequately identifies the arrested person.

25 2. A statement of the officer's grounds for belief that the person was
26 driving or in actual physical control of a motor vehicle in violation of
27 section 4-244, paragraph 33, section 28-1381 or section 28-1382.

28 3. A statement that the person was arrested for a violation of section
29 4-244, paragraph 33, section 28-1381, section 28-1382 or section 28-1383.

30 4. A report of the results of the chemical test that was administered.

31 C. The officer shall also serve an order of suspension on the person
32 on behalf of the department. The order of suspension:

33 1. Is effective fifteen days after the date it is served.

34 2. Shall require the immediate surrender of any license or permit to
35 drive that is issued by this state and that is in the possession or control
36 of the person.

37 3. Shall contain information concerning the right to a summary review
38 and hearing, including information concerning the hearing as required by
39 section 28-1321, subsections G and H.

40 4. Shall be accompanied by printed forms ready to mail to the
41 department that the person may fill out and sign to indicate the person's
42 desire for a hearing.

43 5. Shall be entered on the department's records on receipt of the
44 report by the officer and a copy of the order of suspension.

1 D. If the license or permit is not surrendered pursuant to subsection
2 C of this section, the officer shall state the reason for the
3 nonsurrender. If a valid license or permit is surrendered, the officer shall
4 issue a temporary driving permit that is valid for fifteen days. The officer
5 shall forward a copy of the completed order of suspension, a copy of any
6 completed temporary permit and any driver license or permit taken into
7 possession under this section to the department within five days after the
8 issuance of the order of suspension along with the report.

9 E. The department shall suspend the affected person's license or
10 permit to drive or right to apply for a license or permit or any nonresident
11 operating privilege for not less than ninety consecutive days from that date.

12 F. Notwithstanding subsections A through E of this section, the
13 department shall suspend the driving privileges of the person described in
14 subsection A of this section for not less than thirty consecutive days and
15 shall restrict the driving privileges of the person for not less than sixty
16 consecutive additional days to travel between the person's place of
17 employment and residence and during specified periods of time while at
18 employment, to travel between the person's place of residence and the
19 person's secondary or postsecondary school, according to the person's
20 employment or educational schedule, to travel between the person's place of
21 residence and the office of the person's probation officer for scheduled
22 appointments or to travel between the person's place of residence and a
23 treatment facility for scheduled appointments if the person:

24 1. Did not cause serious physical injury as defined in section 13-105
25 to another person during the course of conduct out of which the current
26 action arose.

27 2. Has not been convicted of a violation of section 28-1381, 28-1382
28 or 28-1383 within sixty months of the date of commission of the acts out of
29 which the current action arose. The dates of commission of the acts are the
30 determining factor in applying the sixty month provision.

31 3. Has not had the person's privilege to drive suspended pursuant to
32 this section or section 28-1321 within sixty months of the date of commission
33 of the acts out of which the current action arose.

34 G. If the department receives only the report of the results of the
35 blood or breath alcohol test and the results indicate 0.08 or more alcohol
36 concentration in the person's blood or breath, ~~or~~ show a blood or breath
37 alcohol concentration of 0.04 or more and the person was driving or in actual
38 physical control of a commercial motor vehicle, **INDICATE 0.05 OR MORE ALCOHOL**
39 **CONCENTRATION IN THE PERSON'S BLOOD OR BREATH IF WITHIN THE PREVIOUS SIXTY**
40 **MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1381, 28-1382 OR**
41 **28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS STATE**
42 **WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383 OR INDICATE ANY**
43 **LEVEL MORE THAN 0.00 ALCOHOL CONCENTRATION IN THE PERSON'S BLOOD OR BREATH IF**
44 **WITHIN THE PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF**
45 **SECTION 28-1383, SUBSECTION A, PARAGRAPH 2 OR AN ACT IN ANOTHER JURISDICTION**

1 THAT IF COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1383,
 2 SUBSECTION A, PARAGRAPH 2, the department shall notify the person named in
 3 the report in writing sent by mail that fifteen days after the date of
 4 issuance of the notice the department will suspend the person's license or
 5 permit, driving privilege or nonresident driving privilege. The notice shall
 6 also state that the department will provide an opportunity for a hearing and
 7 administrative review if the person requests a hearing or review in writing
 8 and the request is received by the department within fifteen days after the
 9 notice is sent.

10 H. A timely request for a hearing stays the suspension until a hearing
 11 is held, except that the department shall not return any surrendered license
 12 or permit to the person but may issue temporary permits to drive that expire
 13 no later than when the department has made its final decision. If the person
 14 is a resident without a license or permit or has an expired license or
 15 permit, the department may allow the person to apply for a license or
 16 permit. If the department determines the person is otherwise entitled to the
 17 license or permit, the department shall issue, but retain, the license or
 18 permit, subject to this section. All hearings requested under this section
 19 shall be conducted in the same manner and under the same conditions as
 20 provided in section 28-3306.

21 I. For the purposes of this section, the scope of the hearing shall
 22 include only the following issues:

23 1. Whether the officer had reasonable grounds to believe the person
 24 was driving or was in actual physical control of a motor vehicle while under
 25 the influence of intoxicating liquor.

26 2. Whether the person was placed under arrest for a violation of
 27 section 4-244, paragraph 33, section 28-1381, section 28-1382 or section
 28 28-1383.

29 3. Whether a test was taken, the results of which indicated the
 30 alcohol concentration in the person's blood or breath at the time the test
 31 was administered of either:

32 (a) 0.08 or more.

33 (b) 0.04 or more if the person was driving or in actual physical
 34 control of a commercial motor vehicle.

35 (c) EXCEPT AS PROVIDED IN SUBDIVISION (d), 0.05 OR MORE IF WITHIN THE
 36 PREVIOUS SIXTY MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION
 37 28-1381, 28-1382 OR 28-1383 OR AN ACT IN ANOTHER JURISDICTION THAT IF
 38 COMMITTED IN THIS STATE WOULD BE A VIOLATION OF SECTION 28-1381, 28-1382 OR
 39 28-1383.

40 (d) ANY LEVEL THAT IS MORE THAN 0.0 IF WITHIN THE PREVIOUS SIXTY
 41 MONTHS THE PERSON WAS CONVICTED OF A VIOLATION OF SECTION 28-1383, SUBSECTION
 42 A, PARAGRAPH 2 OR AN ACT IN ANOTHER JURISDICTION THAT IF COMMITTED IN THIS
 43 STATE WOULD BE A VIOLATION OF SECTION 28-1383, SUBSECTION A, PARAGRAPH 2.

44 4. Whether the testing method used was valid and reliable.

45 5. Whether the test results were accurately evaluated.

1 J. The results of the blood or breath alcohol test shall be admitted
2 on establishing the requirements in section 28-1323 or 28-1326.

3 K. If the department determines at the hearing to suspend the affected
4 person's privilege to operate a motor vehicle, the suspension provided in
5 this section is effective fifteen days after giving written notice of the
6 suspension, except that the department may issue or extend a temporary
7 license that expires on the effective date of the suspension. If the person
8 is a resident without a license or permit or has an expired license or permit
9 to operate a motor vehicle in this state, the department shall deny the
10 issuance of a license or permit to the person for not less than ninety
11 consecutive days.

12 L. A person may apply for a summary review of an order issued pursuant
13 to this section instead of a hearing at any time before the effective date of
14 the order. The person shall submit the application in writing to any
15 department driver license examining office together with any written
16 explanation as to why the department should not suspend the driving
17 privilege. The agent of the department receiving the notice shall issue to
18 the person an additional driving permit that expires twenty days from the
19 date the request is received. The department shall review all reports
20 submitted by the officer and any written explanation submitted by the person
21 and shall determine if the order of suspension should be sustained or
22 cancelled. The department shall not hold a hearing, and the review is not
23 subject to title 41, chapter 6. The department shall notify the person of
24 its decision before the temporary driving permit expires.

25 M. If the suspension or determination that there should be a denial of
26 issuance is not sustained after a hearing or review, the ruling is not
27 admissible in and does not have any effect on any civil or criminal court
28 proceeding.

29 N. If it has been determined under the procedures of this section that
30 a nonresident's privilege to operate a motor vehicle in this state has been
31 suspended, the department shall give information in writing of the action
32 taken to the motor vehicle administrator of the state of the person's
33 residence and of any state in which the person has a license.